IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6210 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PURSHOTTAM S RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6210 of 1989

MR PM THAKKAR for Petitioner No. 1

MR L.R. PUJARI, A.G.P for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. Heard Ms.Sangeeta Pahwa learned Advocate for the petitioner and Mr. L.R. Pujari, learned A.G.P. for the respondent.

2. In this petition under Article 226 of the Constitution of India the petitioner has been challenging the action of the respondent in not considering the case of the petitioner for promotion from the post of Constable to Head Constable, Grade-II, and also quashing the action of the respondent in promoting the junior to the petitioners by superceding the petitioner, as being arbitrary illegal, bad in law, discriminatory and violative of Article 14 and 16 of the Constitution of India by a writ of mandamus with a direction to the respondent to forthwith consider the petitioner for promotion to the post of Head Constable, Grade-II and to give the petitioner promotion with effect from 01.07.1987.

3. The case set out in the petition is that the petitioner after the interview and selection was appointed as an Unarmed Police Constable on 10.07.1978 and the petitioner has served with the respondent for eleven long years; that the seniority list of the Unarmed Police Constable of Surendranagar District came to be published on 3rd October/ December, 1985, showing the position of the petitioner at Serial No. 145; that the petitioner was awaiting his turn for promotion to the post of Head Constable, Grade-II particularly when the petitioner was not communicated any adverse remarks nor any departmental enquiry pending against him. Further, between 24.04.1987 to 24.06.1987, many persons junior to the petitioner came to be promoted including two persons namely Manilal Gangaram at Serial No. 180 and Jayantilal Harjibhai at Serial No. 184; that since the petitioner was superceded in the matter of promotion by promoting juniors to the petitioner not only from the general category as well as also from reserved category, the petitioner made representation to respondent no. 2 making grievance therein that there was no justifiable reasons to supercede the petitioner but the same was of no avail and hence, the writ petition.

4. The respondent in the affidavit-in-reply stated that the adverse remarks were recorded against the petitioner and the same were duly communicated; that the petitioner has suppressed, the fact of adverse remarks having been posted in his service record and the communication of the same, in the present writ petition. That on 29.01.1985 the petitioner has also acknowledged the fact with regard to the communication of adverse remarks to him. It is further stated that the petitioner was considered for promotion as Head Constable, Grade-II but the petitioner was found positively unfit for

promotion and therefore the petitioner was not promoted to the higher post; that while considering the case of the petitioner for promotion it was duly considered that three punishments were inflicted upon him, that the action of respondent no. 2 in promoting the persons junior to the petitioner was just, legal and proper, Since the persons promoted to the post of Head Constable, Grade-II were more suitable and better than the petitioner as the petitioner was positively found unfit for promotional post.

5. Three adjournments were granted to the petitioner for filing affidavit-in-rejoinder. No affidavit in rejoinder refuting the say of the respondent in affidavit-in-reply has been filed by the petitioner. It has been stated by Ms. Pahwa, learned Advocate for the petitioner that during the pendency of this writ petition, the petitioner was promoted in the year 1990 as Head Constable, Grade-II, and that in the year 1993 the petitioner has been further promoted as A.S.I. Grade-I. As far as the relief of promotion to the post of Head Constable, Grade-II is concerned the same does not survive since the petitioner has got one more promotion over and above the promotion to the post of Head Constable Grade-II. As far as the other relief namely deemed date of promotion as Head Constable, Grade-II is concerned, it has been the say of the respondent that the petitioner is guilty of suppression of fact in as much as the recording and communication of the adverse entries in his ACR has not been disclosed in the writ petition. In the petition the say of the petitioner is that no adverse remarks have been made in the service record against him nor any departmental enquiry was initiated against him at any point of time. The respondent has come with a positive statement of adverse entries having been recorded in the A.C.R. of the petitioner. This statement of the respondent in the affidavit-in-reply remains unrefuted in the absence of affidavit-in-rejoinder to this effecton behalf of the petitioner. According to the respondent, the petitioner was considered for promotion from the post of Constable to the post of Head Constable, Grade-II. All that the petitioner can claim is that he has a right to be considered for promotion to the post of Head Constable Grade-II. The statement of the respondent in affidavit in reply with regard to considering the petitioner for promotion to the post of Head Constable, Grade-II remaining unrefuted for want of affidavit in rejoinder, the statement in the affidavit in reply in this regard has to be accepted and for that matter, it has to be found that the petitioner was considered for the

promotion to the post of Head Constable, Grade-II. Hence, there is no question of considering the petitioner as far as the relief of deemed date is concerned.

6. Having regard to the facts and circumstances as pointed out above, the petitioner, in my opinion, would not be entitled to any relief and the petition being devoid of merits would be liable to be dismissed.

7. In the result petition is dismissed with no orders as to costs. Rule is discharged.

(N.G. NANDI,J.)

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